



August 29, 2019

National FOIA Office  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW (2310A)  
Washington, DC 20460

**Re: Freedom of Information Act Request for records relating to NPDES Offshore Oil & Gas General Permits in the Gulf of Mexico**

Dear Freedom of Information Officer:

Earthjustice submits this request on behalf of Healthy Gulf for records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and the implementing regulations of the U.S. Environmental Protection Agency ("EPA"), 40 C.F.R. Part 2. The focus of this request are records regarding the facilities, individuals, and organizations operating under the following National Pollutant Discharge Elimination System ("NPDES") General Permits:

- (1) No. GMG290000 Offshore Oil and Gas Operations in the Western Gulf of Mexico
- (2) No. GEG460000 Offshore Oil and Gas Activities in the Eastern Gulf of Mexico

**RECORDS REQUESTED**

**Regarding (1) General Permit No. GMG290000 Offshore Oil and Gas Operations in the Western Gulf of Mexico and (2) General Permit No. GEG460000 Offshore Oil and Gas Activities in the Eastern Gulf of Mexico (collectively, "the Gulf General Permits"), we request the following records which were generated, received, kept, and/or considered by the EPA from the time period starting on August 1, 2014 up to and including the date of EPA's acknowledgement of this request:**

- 1. Each Notice of Intent submitted to EPA and/or the responsible permitting authority requesting coverage under the Gulf General Permits.**
- 2. All Discharge Monitoring Reports submitted by each facility covered under the Gulf General Permits.**

3. To the extent that identifying information is not identified in the previous requests, please provide the facility/vessel name, facility/vessel ID, and location of every facility covered under the Gulf General Permits.
4. To the extent that identifying information is not identified in the previous requests, please identify the primary operators, day-to-day operators, and vessel operators, as defined in the general permits, of all facilities covered under the Gulf General Permits.
5. Any agreements between EPA and other agencies related to permitting and enforcement (e.g. memorandums of understanding and agreements) of the Gulf General Permits.
6. Any inspection reports or incidents of non-compliance for facilities covered under the Gulf General Permits completed by EPA or any other agency.
7. Outer Continental Shelf (OCS) number locations, including the lease block assigned by the Bureau of Ocean Energy Management (BOEM), or if none, the name commonly assigned to the lease area of each facility covered under the Gulf General Permits.
8. Any records submitted to EPA by any facility, operator, owner, and/or permittee pursuant to the Gulf General Permits, including but not limited to: a change in discharges, anticipated noncompliance, transfer of ownership or control, monitoring reports, additional monitoring by the permittee, and reports of compliance and noncompliance (including the cause of noncompliance, any remedial actions taken, and the probability of meeting the next scheduled requirement).

For the purposes of this request, the term “records” means information and documents of any kind, including, but not limited to: documents (handwritten, typed, electronic, or otherwise produced, reproduced, or stored), letters, emails, facsimiles, memoranda, correspondence, notes, databases, drawings, diagrams, maps, graphs, charts, photographs, minutes of meetings, summaries of telephone conversations, notes or summaries of interviews, electronic or magnetic recordings of meetings, and any other compilation of data from which information can be obtained.

Pursuant to 5 U.S.C. § 552(a)(3)(B), we ask that these records be provided in electronic and searchable format. We request that responsive records be released as soon as they are available. If a response is posted on FOIAonline, we request prompt notification by

email at [semile@earthjustice.org](mailto:semile@earthjustice.org) and [bhardy@earthjustice.org](mailto:bhardy@earthjustice.org) that responsive documents have been posted. We have listed the above requests in order of priority preference and would be amenable to receiving subsets of records from the higher priority categories while EPA processes other records.

## **REQUESTING ORGANIZATIONS**

This FOIA request is submitted by Earthjustice, a 501(c)(3) nonprofit environmental law organization. Earthjustice uses legal advocacy and the strength of partnership to protect people's health, to preserve magnificent places and wildlife, to advance clean energy, and to combat climate change.

This request is submitted on behalf of Healthy Gulf, a 501(c)(3) tax-exempt, nonprofit conservation organization with over 1,300 members throughout the states bordering the Gulf of Mexico and nationwide. Its mission is to unite and empower people in protecting and restoring the Gulf region's natural resources.

## **FEE WAIVER REQUEST**

Healthy Gulf and Earthjustice respectfully request a waiver of all fees associated with this request pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) as implemented by the EPA's fee waiver regulations at 40 C.F.R. § 2.107. FOIA mandates that agencies waive or reduce search and copying fees where disclosure is "in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii). EPA's fee waiver regulations specify several factors it considers when evaluating if "disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester" in its FOIA regulations at 40 C.F.R. § 2.107(l)(2)–(3). As demonstrated below, each of the factors related to the fee waiver requirements weigh in favor of granting our fee waiver request.

### **A. Disclosure of the Requested Information is in the Public Interest**

EPA examines four factors when considering whether a request contributes to the public understanding of the operations or activities of the government: (1) the subject of the request; (2) the informative value of the information being disclosed; (3) the contribution to an understanding of the subject by the public is likely to result from disclosure; and (4) the significance of the contribution to public understanding. *See* 40 C.F.R. § 2.107(l)(2).

*Factor 1: The Request Seeks Information That Has a “Direct and Clear” Connection to Operations or Activities of the Federal Government.*

The first factor to consider when determining if a request contributes to the public understanding is that the subject of the request “concern[s] identifiable operations or activities of the Federal government, with a connection that is direct and clear, not remote.” 40 C.F.R. § 2.107(l)(2)(i). The instant request meets this test because the records sought relate to EPA’s responsibility to administer the Clean Water Act’s NPDES permitting program in the Outer Continental Shelf, where the EPA exercises non-delegated permitting authority. The requested records pertain to the Gulf General Permits, which the EPA administers under such authority. Further, any records which might involve state-delegated Clean Water Act permitting programs also has a direct connection to operations or activities of the federal government, as the EPA maintains certain oversight responsibilities over these state programs. Therefore, the requested records have a direct and clear connection to operations and activities of the federal government.

*Factor 2: Disclosure of the Requested Records is “Likely to Contribute” to Public Understanding of Government Operations or Activities.*

The next factor EPA considers is whether disclosure of the requested records is “likely to contribute” to an “understanding of government operations or activities.” 40 C.F.R. § 2.107(l)(2)(ii). To satisfy this requirement, the disclosable records must be “meaningfully informative about government operations or activities.” *Id.* Information not “already . . . in the public domain” is considered more likely to contribute to an understanding of government operations or activities. *Id.*

Here, the records sought will provide Earthjustice, Healthy Gulf, and the general public meaningful information about government operations and activities because such disclosure will increase understanding of oil and gas pollution discharges to waters in the Outer Continental Shelf and those dischargers’ compliance with EPA issued permits.

Healthy Gulf is a public-interest organization dedicated to protecting the environment, public resources, and human health by, among other mechanisms, monitoring government management of the Outer Continental Shelf, encouraging public participation in government processes, and ensuring enforcement of applicable public laws. Healthy Gulf intends to disseminate information that may be available in the requested records through various means, including newsletters, reports, newspaper and magazine articles, web sites, and through other formal and informal communications. These types of public outreach are sufficient to warrant a fee waiver. *See W. Watersheds*

*Proj. v. Brown*, 318 F. Supp. 2d 1036, 1041 (D. Idaho 2004) (noting cases holding “statements of intent to disseminate requested information through newsletters, popular news outlets, and presentations to public interest groups, government agencies, and the general public sufficient to entitle an organization to a fee waiver”).

Additionally, this information is not already accessible through EPA’s website or otherwise in the public domain. A thorough search of EPA’s Enforcement and Compliance History Online (“ECHO”), “Surf Your Watershed,” and other publically accessible NPDES databases did not yield the requested information regarding the Gulf General Permits. Neither is there public access to the EPA’s Central Data Exchange nor any electronic reporting databases that contain the requested information.

For these reasons, the requested records are likely to contribute to the public’s understanding of government operations or activities.

*Factor 3: Disclosure of the Requested Records Will Contribute to “Public Understanding” of EPA’s Administration of Clean Water Act Permits and Compliance with Those Permits in the Gulf of Mexico.*

EPA next considers whether disclosure will contribute to “public understanding” of the subject. 40 C.F.R. § 2.107(l)(2)(iii). To qualify for a fee waiver, disclosure should “contribute to the understanding of a reasonably broad audience of persons interested in” the subject matter of the FOIA request, as opposed to the “individual understanding” of the requester. *Id.* In evaluating a fee waiver request, EPA considers whether the requester has “expertise in the subject area and ability and intention to effectively convey information to the public.” *Id.* Federal courts have held that public interest groups satisfy this requirement where they demonstrate an “ability to understand and disseminate the information.” *Judicial Watch, Inc. v. Dep’t of Justice*, 122 F. Supp. 2d 5, 10 (D.D.C. 2000). Here, Earthjustice’s expertise in mitigating water pollution and Healthy Gulf’s expertise in communicating with the public regarding issues related to offshore drilling operations and the associated risks weigh in favor of granting of a fee waiver.

Public interest is the subject matter of this FOIA request. A broad audience both in the United States and internationally is interested in pollutant discharges into the Gulf. The information requested will contribute to public understanding of the types and amount of pollutant discharge into the Gulf. Earthjustice will draw on its institutional expertise to analyze the requested information and the ability to disseminate the requested information to the general public (*e.g.*, Earthjustice has attorneys and other professionals who have the ability to assess and digest the requested information, and Earthjustice has the capacity to publish reports regarding that information). Earthjustice can educate the

general public on these matters via its website, blog postings, social media postings, weekly electronic mailings, and earned media coverage in newspaper, radio, and television. Earthjustice also participates in panel discussions, debates, film screenings, conferences, presentations, hearings, rallies, and other outreach events, at which information received from this request can be distributed.

Healthy Gulf possesses the experience and expertise necessary to evaluate the requested information and provide it to the public in a useful form. The group is qualified to extract, synthesize, analyze, and convey the requested information to its supporters, other organizations, and the public at large in a way that will increase understanding of government actions affecting public resources on the Outer Continental Shelf. Healthy Gulf has scientists, lawyers, and communications professionals who specialize in public outreach. They use that expertise to analyze and evaluate information about governmental decisions affecting public resources, such as the management of the Outer Continental Shelf, and provide those analyses and evaluations to Healthy Gulf's supporters, other organizations, and the general public.

For these reasons, Earthjustice and Healthy Gulf are well-situated to contribute to public understanding of the subject area, and therefore satisfy this factor in its fee waiver request.

*Factor 4: Disclosure of the Requested Records Will Make a "Significant" Contribution to the Public's Understanding of EPA's Permitting of Oil and Gas Facilities in the Gulf of Mexico.*

The fourth factor EPA considers is whether the records are "likely to contribute 'significantly' to public understanding of government operations or activities." 40 C.F.R. § 2.107(l)(2)(iv); *see also Fed. CURE v. Lappin*, 602 F. Supp. 2d 197, 205 (D.D.C. 2009) (the relevant test is whether public understanding will be increased after disclosure, as opposed to the public's understanding prior to the disclosure). Where information is not currently available to the general public, and where "dissemination of information . . . will enhance the public's understanding," the fourth public interest factor is satisfied. *Fed. CURE*, 602 F. Supp. 2d at 205.

Here, the request satisfies the fourth factor because at present the public has almost no knowledge about oil and gas facilities located in the Outer Continental Shelf that are permitted to discharge pollution into the Gulf of Mexico, whether those facilities are exceeding their permitted discharge levels, and if any noncompliance has been addressed and corrected. Given that so little is known about this topic, disclosure of the requested

records will inevitably make a “significant” contribution to public understanding in this regulatory area.

## **B. There is No Commercial Interest in Disclosure of the Requested Records**

The second fee waiver requirement, that the request “is not primarily in the commercial interest of the requester” 40 C.F.R. § 2.107(l)(1), is also met here. To determine whether the request “is not primarily in the commercial interest of the requester,” EPA considers two factors: (1) the existence and magnitude of a commercial interest and (2) the primary interest in disclosure. *See* 40 C.F.R. § 2.107(l)(3).

The requesters, Earthjustice and Healthy Gulf, as 501(c)(3) nonprofit organizations and do not have any “commercial interest that would be furthered by the requested disclosure” of the information.<sup>1</sup> *Id.* § 2.107(l)(3)(i). *See McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (noting that FOIA’s fee waiver provision is to be “liberally construed in favor of waivers for noncommercial requestors” (quoting legislative history)).

The primary interest in obtaining the requested information is to disclose the information in order to broaden public understanding of EPA’s oil and gas NPDES permitting and to undertake advocacy efforts aimed at protecting the Gulf of Mexico by improving oversight of oil and gas pollution discharges under the Clean Water Act, if appropriate. Earthjustice and Healthy Gulf seek solely to protect the natural resources of the Gulf Region and seek no commercial benefit for this work.

## **CONCLUSION**

For the foregoing reasons, Earthjustice and Healthy Gulf are entitled to a fee waiver for this request. In the event that fees are not waived, please notify and inform us of the basis for your decision, as required by FOIA. Again, if this request for a fee waiver is denied and any expenses associated with this request are in excess of \$25.00, please obtain our approval before any such charges are incurred.

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<sup>1</sup> The legislative history of the fee waiver provision reveals that it was added to FOIA “in an attempt to prevent government agencies from using high fees to discourage certain types of requesters, and requests,” in particular those from journalists, scholars, and nonprofit public interest groups. *See Ettlinger v. FBI*, 596 F. Supp. 867, 872 (D. Mass. 1984).

We appreciate your expeditious help in obtaining the requested information. Please promptly make available copies of all requested records, either through the FOIA Online system or via mail/email at the contact information listed below.

We request that, should this FOIA request take longer than 10 days to process, you notify us of the individualized tracking number that has been assigned to the request and information about how we may receive information on the status of this request via telephone or Internet. We also request that you provide the estimated date on which you will complete action on this request, pursuant to 5 U.S.C. § 552(a)(7).

Please contact us if you have any questions, or if we can clarify this request in any way. As provided by FOIA, 5 U.S.C. § 552(a)(6)(A), we look forward to a response within 20 business days. Thank you in advance for your assistance.

Sincerely,

/s/ Shana E. Emile

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